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OGC HAS REVIEWED.

A U.S. citizen overseas receiving earned income from an organization created by an agency of the Government has claimed the exemption under Section 911(a) without application of the exception affecting amounts "paid by the United States or any agency thereof." The organization is not created by an act of Congress and while its functional purpose falls within the ultimate aims of the Agency, its activity still requires an identity and valid existence which is independent of the Federal Government.

Section 911(a) of the Internal Revenue Code of 1954 exempts amounts received by individual U.S. citizens from sources without the U.S. if such amounts constitute earned income attributable to certain periods of residence abroad and if the amounts are not "paid by the United States or any agency thereof."

The exception of amounts "paid by the United States or any agency thereof" first appeared in the Revenue Act of 1932. The legislative purpose was to terminate a double exemption enjoyed by employees of the United States who were normally exempt from foreign taxes and without the exception would thus have been relieved of both the foreign and the U.S. taxes. (Senate Report No. 661, of the Committee on Finance, 72d Congress, 1st Session, on the Revenue Bill of 1932, and the related House of Representatives Report No. 1492, of the Committee on Conference, Amendment No. 19, the pertinent parts of which were published in C.F. 1939-1 (Part 2) at pages 118 and 123, respectively.) There have not been any statutory amendments to the exception and the language is preserved in the present Code of 1954.

While the import of the language in the exception at first seems clear, there is a latent ambiguity which can only be explained in the light of the legislative intent of its drafters. Where the circumstances are such that a double exemption is not possible for certain classes of people on the basis of their identification with the Government, then payments by a proprietary activity of the U.S. to such persons are not to be construed as being made "by the United States or any agency thereof" provided only that the proprietary serves as the actual source of the payment and not simply as the conduit for payment to persons who would otherwise receive the funds directly from the U.S. or any of its agencies.

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Approved:

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Director, Tax Rulings Division

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*Center for Distribution*

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